



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

October 31, 1996

Benjamin L. Ginsberg, Esquire
Patton Boggs, L.L.P.
2550 M Street, NW
Washington, DC 20037-1350

RE: MURS 4317 and 4323
Huckabee U.S. Senate Election Committee
Prissy Hickerson, as treasurer
The Honorable Mike Huckabee

Dear Mr. Ginsberg:

On March 12 and 13, 1996, the Federal Election Commission notified your clients, the Huckabee Election Committee (U.S. Senate) ("the Committee"), Prissy Hickerson, as treasurer, and the Honorable Mike Huckabee, of two complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaints, and information supplied by your clients, the Commission, on October 16, 1996, found in MUR 4317 that there is reason to believe the Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) and 2 U.S.C. § 441b, the latter by accepting a contribution from Delta Beverage Group, Inc. The Commission found no reason to believe that the Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from the Coca-Cola Bottling Company of Fort Smith or from Hudson, Cisne, Keeling-Culp & Company.

In MUR 4323 the Commission found that there is reason to believe that the Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b and 2 U.S.C. § 434(b)(3)(A). The Commission also found in MUR 4323 that there is reason to believe that the Honorable Mike Huckabee violated 2 U.S.C. § 441b.

The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that violations have occurred and proceed with conciliation.

Benjamin P. Ginsberg, Esquire
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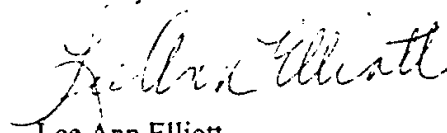
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lee Ann Elliott
Chairman

Enclosure

Factual and Legal Analysis

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Huckabee Election Committee
(U.S. Senate)
Prissy Hickerson, as treasurer
The Honorable Mike Huckabee

MURS: 4317 and 4323

I. GENERATION OF MATTERS

MUR 4317 and MUR 4323 were generated by complaints filed by the Democratic Senatorial Campaign Committee ("the DSCC") on March 4 and 8, 1996, alleging violations of the Federal Election Campaign Act ("the Act") and of the Commission's regulations by the Huckabee Election Committee (U.S. Senate) and Prissy Hickerson, as treasurer, ("the Senate Committee"), and by the Honorable Mike Huckabee.

The Senate Committee is the principal campaign committee of Mike Huckabee for his 1995-96 campaign for the United States Senate. The Huckabee Election Committee ("the State Committee") is the campaign committee of Mike Huckabee for his 1994 campaign for the office of Lieutenant Governor in the State of Arkansas. On August 15, 1995 the Huckabee Exploratory Committee (U.S. Senate) submitted its Statement of Organization to the Secretary of the Senate. On October 12, 1995, the Senate Committee registered with the Secretary of the Senate; on the same date Mike Huckabee filed his Statement of Candidacy. More recently, on May 30, 1996, Mike Huckabee withdrew from the Senate race after having won the Republican primary election on May 21, 1996.

The complainant alleges in MUR 4317 that Mike Huckabee and the Senate Committee received corporate contributions from three business contributors. In MUR 4323 the complainant alleges that Mike Huckabee and the State Committee made expenditures to test the

waters for a campaign for the U.S. Senate in 1995, that these expenditures became contributions to the Senate Committee, and that the Senate Committee failed to use its "best efforts" to obtain and report contributor information required by the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Corporate and Partnership Contributions - MUR 4317

2 U.S.C. § 441b(a) prohibits corporations, labor organizations and national banks from making contributions to federal candidates and political committees, and political committees from knowingly accepting such contributions. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any person may contribute to a federal candidate or committee, while 2 U.S.C. § 441a(f) prohibits committees from accepting contributions in excess of the statutory limitations. 2 U.S.C. § 431(11) includes partnerships within its definition of "person."

Pursuant to 11 C.F.R. § 103.3(b)(1) and (3), contributions about which there are questions as to whether they are prohibited or excessive under the Act may be deposited into a recipient committee's account while their legality is investigated. Unless it can be shown that a contribution is not prohibited or excessive, the contribution must be refunded within thirty or sixty days of receipt respectively.

2 U.S.C. § 434(b)(3)(A) requires the identification in committee reports of all persons who have made contributions to the reporting committee in excess of \$200.

The complaint in MUR 4317 alleges that the Senate Committee violated 2 U.S.C. § 441b by accepting contributions from corporations in Arkansas and Tennessee. Specifically, the complaint alleges that the Senate Committee accepted a \$500 contributions from the Coca-Cola Bottling Company of Fort Smith, Arkansas on August 1, 1995, a contribution of \$1,000 from the

Delta Beverage Group, Inc. of Memphis, Tennessee on August 22, 1995, and a contribution of \$500 from Hudson, Cisne, Keeling-Culp and Company of Little Rock, Arkansas in October, 1995.

1. Coca-Cola Bottling Company of Fort Smith

The 1995 Year End Report filed by the Senate Committee on February 7, 1996, itemized a \$500 contribution from "Fort Smith Coca Cola Bottling Co." as a political action committee contribution. According to the Coca Cola Bottling Company of Fort Smith ("Coca Cola of Fort Smith"), this company is a limited partnership, not a corporation, and it was the partnership which made the contribution.

The Senate Committee states in its response to the complaint in MUR 4317 that the contribution came from one of the partners at Coca-Cola of Fort Smith, Roger Meek. Attached to this response is a copy of an amendment to the Committee's 1995 Year End Report dated March 7, 1996, which itemizes a \$500 contribution from Roger Meek as a contribution from an individual. The letter attached to the amended report states, however: "We have learned that a contribution we listed as a PAC is in fact a partnership. Our itemized receipts page will show the proper designation. Our detailed summary page has been adjusted to reflect the decrease in our PAC contribution total and the increase in our individual contribution total."

As a partnership, Coca-Cola of Fort Smith could have contributed as much as \$1,000 per election to the Senate Committee. So could Roger Meek as an individual. Thus, even though there is a lack of consistency between the Senate Committee and Coca Cola of Fort Smith as to the identity of the contributor, and despite the discrepancy within the committee's response in the same regard, there appears to have been no violation of 2 U.S.C. § 441b by the Senate

Committee. Therefore, there is no reason to believe that the Senate Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b with regard to the contribution from the Coca Cola Bottling Company of Fort Smith. Based, however, upon the apparent intention of the company, there is reason to believe that the Senate Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to identify the contributor of the \$500 as the partnership, not Mr. Meek.

2. Hudson, Cisne, Keeling-Culp and Company

The Senate Committee's 1995 Year End Report also itemized a \$500 contribution from "Culp & Company Hudson, Cisne, Keeling." This contribution is included in the itemization of receipts from individuals.

Hudson, Cisne, Keeling-Culp and Company, ("Hudson Cisne") asserts that it is a general partnership, not a corporation. The contribution was apparently made by the partnership, rather than by an individual partner.

The response filed by the Senate Committee states, however, that the contribution at issue came from an individual partner at Hudson, Cisne, namely Richard Cisne. Attached to the response is an amendment to the committee's 1995 Year End Report dated March 17, 1996 which itemizes Mr. Cisne as the contributor. The letter accompanying the amendment states: "We have learned that a contribution which we listed as being from a partnership was actually from an individual partner of the company."

Given the status of the Hudson, Cisne as a partnership and the amount of the contribution, there appears to have been no violation of 2 U.S.C. § 441b in connection with this contribution by the Senate Committee; this is true whether the contribution came from the partnership or from

Richard Cisne. Thus, there is no reason to believe that the Senate Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b with regard to the company's contribution. There is reason to believe that the Senate Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by misreporting the identity of the contributor.

3. Delta Beverage Group, Inc.

The complaint alleges that the Senate Committee accepted a \$1,000 contribution from Delta Beverage Group, Inc., in October, 1995. The Senate Committee acknowledges this receipt, but asserts that the contribution was intended for Mr. Huckabee's campaign for the office of lieutenant governor, not for his Senate campaign. It states that it immediately refunded the contribution upon "learning of our error." A copy of the refund check, dated March 1, 1996, is attached to the Senate Committee's response. The Senate Committee argues that this contribution was "the result of an honest and unintentional error in the first weeks of the campaign's exploratory phase." No copy of the contribution check has been submitted to the Commission.

The \$1,000 contribution from Delta Beverage was received by the Senate Committee on August 22, 1995. It was not refunded until March 1, 1996. Thus, the refund was not made within the thirty-day window provided at 11 C.F.R. § 103.3(b). There is reason to believe that the Senate Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b by accepting a \$1,000 contribution from Delta Beverage Group, Inc.

B. Testing-the-Waters Expenditures - MUR 4323

1. The Law

2 U.S.C. § 431(2) defines "candidate" as an individual who is seeking nomination or election to Federal office, who has received contributions or made expenditures in excess of \$5,000, or who has given consent to others to receive contributions or make expenditures in excess of \$5,000. Within 15 days of becoming a candidate, an individual must designate a principal campaign committee to receive contributions and to make expenditures on his or her behalf. 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 110.1(a). Within 10 days of being designated by the candidate, a principal campaign committee must file a Statement of Organization. 2 U.S.C. § 433(a).

The Act's definitions of "contribution" and "expenditure" at 2 U.S.C. §§ 431(8)(A)(i), 431(9)(A)(i) and 441b(b)(2) include "anything of value" provided by a person "for purposes of influencing a federal election" or "in connection with any [federal] election." 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A) define "anything of value" to include in-kind contributions.

11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i) exclude from the definitions of "contribution" and "expenditure" any funds received or payments made "solely for the purpose of determining whether an individual should become a candidate" According to these same regulations, activities which may be undertaken in order to "test-the-waters" for a candidacy include, but are not limited to, conducting an opinion poll, travel and the use of telephones. Such testing-the-waters activities must involve funds which are permissible under the Act. If the

individual later becomes a candidate, testing-the-waters contributions and expenditures become reportable on the first report filed by the candidate's principal campaign committee. 11 C.F.R. § 101.3.

Pursuant to 11 C.F.R. § 106.3(b)(1), expenditures made by an entity other than a political committee for federal campaign-related travel are reportable by the federal committee benefited. If a trip made by a candidate involves both campaign-related and non-campaign-related stops, the portion of the expenditures for this trip which are allocable to campaign activity are reportable expenditures. Incidental contacts are not considered to be campaign activity. 11 C.F.R. § 106.3(b)(2). "Where a candidate makes one campaign-related appearance in a city, that city is a campaign-related stop and the trip to that city is reportable." AO 1994-37 citing 11 C.F.R. § 106.3(b)(3).

11 C.F.R. § 110.3(d) prohibits the transfer "of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee for a federal election" According to the Explanation and Justification which accompanied the submission of this regulation to Congress in August, 1992, the rule addresses situations in which "candidates for federal office who were once candidates for state office have state campaign committees with funds leftover from a state campaign" and "wish to transfer these funds to their federal campaign committees for use in the federal campaign." 57 FR 36344 (August 12, 1992). According to the revised implementation plan for this regulatory provision, "[t]he rule applies to transfers from any nonfederal campaign committee, including campaign committees for any state or local office." 58 FR 14311 (March 17, 1993).

2. Factual Background to Allegations

a. Arkansas State Election Law

Arkansas state law limits to \$1,000 per election per candidate the amount which individuals, corporations, labor organizations and banks may contribute to candidates for state office. (Arkansas Code Annotated ("A.C.A.") § 7-6-203(a) and (b)). Arkansas law prohibits candidates for state office from raising money earlier than two years before their next election, unless they are attempting to retire debt from an earlier campaign. (A.C.A. § 7-6-203(f)). Candidates may raise enough to cover "reasonable" fundraising expenses. (A.C.A. § 7-6-219 and Arkansas Ethics Commission Opinion No. 91-EC-012). The governor, lieutenant governor, secretary of state, certain other elected state officials and members of the general assembly may not accept contributions during the period beginning 30 days before a regular legislative session and ending 30 days after such session. (A.C.A. § 7-6-203(g)).

b. Press Allegations re: Huckabee State Campaign Debt

The complaint in MUR 4323 includes as enclosures a number of news stories in Arkansas publications concerning fundraising undertaken by Mike Huckabee's State Committee and expenditures made by that committee in 1995. For example, the computer version of a story printed in the Commercial Appeal on October 26, 1995 asserts under the headline, "Huckabee Starts Senate Bid For Arkansas, Not GOP," that as of that date Mr. Huckabee had raised \$138,000 since his 1994 state election, although his state campaign had ended with a debt of only \$20,000 - \$35,000. (Complaint, attached Item #8). Another computer version of a story, this one dated November 5, 1995 and carried in the Arkansas Democrat-Gazette, is entitled

"Huckabee Digs Out of Debt . . ." It uses the figures of \$137,650 for monies raised and \$35,560 for state election-related debt. (Complaint, attached Item #12).

A computer version of yet another newspaper story attached to the complaint is dated August 27, 1995 and bears the heading, "Huckabee's Not Sweating This Dilemma." Carried in The Commercial Appeal of Memphis, the story contains the following:

As his bad luck would have it, Huckabee organized a Senate exploratory committee on the very day the Whitewater grand jury handed down a 21-count indictment, 19 counts naming Tucker.

Huckabee claims that is just pro forma and he is months away from making a decision about the Senate race. But his campaign finance records belie that. Senate rules require candidates to file a financial disclosure report after receiving or spending more than \$5,000. Huckabee hasn't filed one yet - he said last week he has yet to reach the threshold.

But his state campaign finance records show the \$29,811-a-year lieutenant governor is collecting and spending from \$20,000 to \$30,000 a month campaigning for something.

(Complaint, attached Item #7).

In an attachment to the complaint entitled "Analysis of Huckabee's Post Election 1994 Election Report," which was apparently compiled on behalf of the complainant, it is stated that "[a]ccording to Huckabee's own records, he raised \$159,322.27 to retire a post-campaign debt of \$11,739.01." The same attachment states that a math error resulted in an overstatement by \$24,000 of the State committee's debt. It continues:

Had the math error not occurred, and based upon actual calculations, the campaign should have retired its debt at the end of May, 1995 with a surplus of \$8,805.65. However, due to the miscalculation of debt, an additional \$72,284.22 was raised with expenditures of \$57,268.85

subsequent to the month of May 1995. If the debt was overstated by nearly \$24,000, then a real question arises as to where that \$24,000 actually went.

(Complaint, attached Item #3, page 1).

On March 28, 1996, the Arkansas Ethics Commission ("AEC") released two rulings in a letter addressed to then Lt. Governor Mike Huckabee. These rulings, based upon a review requested by Mr. Huckabee of his 1994 state campaign's post-election records and reports, were as follows:

RULING NUMBER 1

THE CONTRIBUTION AND EXPENDITURE REPORTS FILED BY
LT. GOVERNOR HUCKABEE'S CAMPAIGN IN 1995 WERE
INACCURATE.

RULING NUMBER 2

THE HUCKABEE CAMPAIGN DID NOT ACT REASONABLY IN
RAISING \$91,000 TO SATISFY A DEBT THAT IT REPORTED AS
\$35,161.09.

Certain elements in the findings of fact released with these rulings are relevant to the present matter. With regard to inaccuracies in the reports filed by the 1994 campaign cited in Ruling 1, the AEC found that a "[r]eview of the underlying records revealed that the candidate's post-election travel was primarily to in-state political functions, not solely related to debt retirement, but also to general political activity which the Huckabee campaign assumed should also be paid out of campaign funds."

The findings of fact related to Ruling 2 contain the following:

- (a) When Lt. Governor Huckabee finished his 1994 campaign, he finished it in debt. After a review of the records, it was determined that

the debt was not greater than \$35,161.09. Of this amount, \$7,366.09 reflected reimbursements to the candidate and his spouse for expenses incurred during the 1994 campaign

(b) The staff review found evidence that on August 1, 1995, the \$15,000 campaign debt owed to political consultant Dick Morris was forgiven. Smaller debts totaling \$3,164.91 had already been refunded Therefore, the total amount of debt finally owed as a result of the 1994 campaign and paid through 1995 efforts to retire this debt was \$16,996.18.¹

(c) The majority of funds expended in 1995 were for administrative costs and expenses incurred in 1995. When the Huckabee campaign began spending money raised by debt retirement fund raisers, most of the money was spent on administrative costs. These administrative costs related to general political activity, including attending lunches, benefits and other political functions. . . .

(d) Brenda Turner was promised a salary of \$635.00 per week for work performed between January 1 and May 7, 1995. She has stated that no more than half of this work was related to debt retirement. She was paid \$10,545.99 in May, 1995, after the first debt retirement fund raising effort, for work performed between January 1 and May 7, 1995.

(e) All postage and telephone expenses, totaling almost \$18,000 were paid through contributions received in 1995. Not all of these expenses related to debt retirement. Some of these were related to general political activity.

(f) In May, 1995, the campaign reported receiving contributions of \$34,195.17, just less than the total 1994 campaign debt of \$35,161.09. The review showed that only \$4,500.00 was paid in May to retire the campaign debt. The remaining expenditures went to post-election administrative costs.

The AEC also reached a series of conclusions which included, among others, the following:

(1) Lt. Governor Huckabee's 1994 campaign ended in debt. Pursuant to Ark. Code Ann. §§ 7-6-203 and 219, the campaign was allowed to raise

¹ \$35,161.09 minus \$15,000 minus 3,164.91 equals \$16,996.18.

funds more than 2 years before the lieutenant governor's next election for the sole purpose of retiring the debt from the previous campaign.

(3) In 1991, the Commission issued Ethics Opinion 91-EC-012 which provided that, in addition to raising funds to retire the amount of [his or her] debt, a candidate could also use campaign funds to pay reasonable expenses related to retiring the debt. . . . The Opinion states that such costs, however, must be legitimately and reasonably related to debt retirement and administering the past debt funds.

(4) It is not reasonable for a campaign to use funds raised pursuant to debt retirement to pay off political expenses which do not directly relate to debt retirement.

(6) It is not reasonable for a campaign to raise \$91,825.00 in contributions to retire a campaign debt of \$35,161.09.

3. Allegations in the Complaint

The complaint in MUR 4323 alleges that funds raised by the State Committee were used to fund activities undertaken by, or on behalf of, Mike Huckabee's campaign for nomination to the U.S. Senate. In particular, the complaint cites two specific instances of alleged State Committee-funded, but Senate Committee-related, testing-the-waters activity: a fundraising letter and survey mailed in May, 1995, and a trip to Washington, DC in August, 1995. The complaint also, through the news articles attached, emphasizes alleged discrepancies between the State Committee's actual debt and the amount of post-election contributions collected, raising questions as to the uses of other amounts received over and above the total of state campaign debts owed.

a. Letter and Survey

The complainant alleges that, according to a news report published on July 24, 1995, in the Arkansas Democrat-Gazette, Mr. Huckabee had decided as of that date to establish an exploratory committee related to a possible campaign for nomination to the office of U.S. Senator. (Complaint, page 2; attached Item #11). This decision is seen by the complainant to have been the result of favorable responses to a letter sent earlier to Republicans in Arkansas which asked if Mr. Huckabee should run for the Senate. In the news account Mr. Huckabee is quoted as having stated that there had been an "incredible" response to the letter. (Complaint, attached Item #11).

The complainant states that no expenditures related to the letter cited in the Democrat-Gazette story are to be found in the Senate Committee's reports filed with the Commission, while the cited news report stated that "Huckabee spent \$3,000 in printing and \$5,000 in 'office supplies' from his state campaign account in the month of July." The complaint alleges that these State Committee expenditures were "to finance 'testing the waters' activities for [Huckabee's] inevitable Senate run, in violation of federal law." (Complaint, page 2).

b. Trip to Washington, DC

The complainant, quoting in part from a story in the Arkansas Times on February 9, 1996, also alleges that Mike Huckabee "had his Lieutenant Governor's campaign pay the expenses for him and his campaign aide, Brenda Turner, to travel to Washington, DC" in 1995. According to this news story, which is also attached to the complaint, Huckabee

charged, as a 1994 campaign expense, \$2,000 for an August [1995] trip by him and campaign aide Brenda Turner to Washington. The trip,

undertaken in part to explore his Senate prospects and in part to talk to contributions, other than forgiveness of a debt to Morris

(Complaint, attached Item #3).

Also included with the complaint are several computer versions of other newspaper stories run in August, 1995 which address the same August, 1995 Washington trip as a testing-the-waters activity. One story entitled "Huckabee Gets Signs He'd Be Hit If He Ran," which was carried in the Arkansas Democrat-Gazette on August 6, read:

Showing signs of a Senate run, Lt. Gov. Mike Huckabee spent the past week in the nation's capital laying groundwork for 1996.

Huckabee met with key Republicans, including [Senate] Majority Leader Bob Dole of Kansas and House Speaker Newt Gingrich of Georgia, during his three-day visit to Washington.

The response, Huckabee said, was overwhelmingly positive. "It's been incredible," he said. "If I'd had this kind of reaction in '92, I'd already be here."

(Complaint, attached Item # 9).

On the same date the Washington Post ran a story entitled "Clinton Advisor May Aid GOP Arkansan," which began:

When Arkansas Lt. Gov. Mike Huckabee (R) came to town last week to discuss his planned race for the Senate vacancy created by the retirement next year of Sen. David Pryor (D), he brought some surprising news.

(Complaint, attached Item # 9). (Emphasis added).

4. Responses to Complaint

a. Letter and Survey

With regard to the fundraising letter cited in the complaint, the Senate Committee response asserts that "the May 1995 mailing . . . had a dual purpose. The main purpose was to

retire debt from [sic] 1994 Lt. Governor's campaign. . . . The second purpose of the mailing was to allow Lt. Governor Huckabee to gauge his constituents' views on a number of important state issues." In the latter regard, and citing the attached affidavit signed by Beverly Turner,

Mr. Huckabee's state campaign director, the response states:

Thus, attached to the two-page debt retirement letter was a ten-question opinion survey on issues such as school construction, highway taxes, sales taxes on food, an informed consent law, welfare system reform, the death penalty, drunk-driving laws and the [sic] certain amendments to the Arkansas Constitution. . . . Given that Senator Pryor's retirement announcement occurred only days earlier on April 21, 1995 and attracted a high level of media coverage, speculation as to who might succeed him was also a legitimate state issue of importance to the Lt. Governor's office. . . . For this reason alone, one brief question in the constituent survey asks for an opinion as to whether Lt. Governor Huckabee should consider running for the open U.S. Senate seat.

(Senate Committee Response, page 3).

The Senate Committee argues that this one survey question, "which does not advocate election or defeat, solicit money or even gauge support given the question's insignificant role in the mailing as a whole, cannot be construed as a 'testing-the-waters' effort . . ." (Senate Committee Response, page 3). The response also states that the costs of the mailing were "paid out of Lt. Governor Huckabee's state account." (Senate Committee Response, page 3).

In her affidavit, Ms. Turner states that the "main fundraising vehicle" for debt retirement used by the Huckabee campaign for Lt. Governor was the letter sent out in May, 1995. (Turner Affidavit, § 3). She says:

Given my position as Campaign Director of Mr. Huckabee's 1994 campaign for Lt. Governor in Arkansas, after the election I assumed responsibility for ensuring that all outstanding debts stemming from this campaign were settled in an appropriate manner so as to close out our books and banking activity. In order to fully comply with an Arkansas law prohibiting fundraising activities during a state legislative session, it

was not until May of 1995 that we began our fundraising efforts to help retire the debt from this campaign.

(Turner Affidavit, § 2).

Ms. Turner states further that "[t]his letter related solely to debt retirement for the 1994 Lt. Governor's race. It never directly or indirectly mentions the U.S. Senate seat in Arkansas being vacated by Senator Pryor." (Turner Affidavit, § 3). Ms. Turner acknowledges, however, the ten-question opinion survey attached to the letter and the one question which expressly addressed "whether or not Lt. Governor Huckabee should consider running for the seat." (Turner Affidavit, § 4). Ms. Turner goes on to say that,

[b]ecause the sole purpose of the mailing comprised of the letter and the survey was to raise funds to retire the debt from his state election campaign and to obtain constituent views on a variety of important state issues, it was paid for out of Lt. Governor Huckabee's state account. Neither the letter nor the survey were sent for the purpose of "testing the waters" regarding a possible U.S. Senate bid. Indeed, given the level of speculation and press coverage surrounding Mr. Pryor's announcement, the one brief question out of this four-page mailing as to who would succeed him was a legitimate state issue of concern to the Lt. Governor's office.

(Turner Affidavit, § 5).

b. Trip to Washington, DC

The response of the Senate Committee argues that the trip to Washington, DC cited in the news stories was "not a 'testing the waters' trip under federal law." Rather, counsel states that the trip had as its "sole purpose" the discussion of a debt owed to political consultant Richard Morris by the State Committee. As evidence of this asserted fact, counsel notes that Ms. Turner, who was director of Mr. Huckabee's 1994 campaign for lieutenant governor, accompanied

Mr. Huckabee to Washington on the same trip "because she was in charge of all debt retirement efforts stemming from that race." (Senate Committee Response, pages 1-2).

In her affidavit Ms. Turner denies "unequivocally" that the Washington trip was for purposes of "testing-the-waters." She states that the trip took place on August 1-3, 1995, that its "sole purpose" was to meet with Mr. Morris, and that the original plan had been to meet with Mr. Morris in Arkansas. (Turner Affidavit, § 9). According to Ms. Turner, she and Mr. Huckabee met with Mr. Morris on August 1 and August 2. "At the conclusion of the August 2nd meeting, Mr. Morris agreed to forgive the debt owed to him." (Turner Affidavit, § 8).

Ms. Turner also states:

However, given that we had substantial time on our hands during our trip and that Lt. Governor Huckabee had gained some national recognition for being the first Republican to win a state-wide election in President Clinton's home state, Lt. Governor Huckabee took the opportunity to make courtesy visits with several prominent Republican leaders, conservative organizations and members of the Press, including Senator Dole, Speaker Gingrich, Majority Leader Arney, Senator Faircloth, the National Republican Senatorial Committee, the Senate Steering Committee comprised of conservative U.S. Senators, Washington Post columnist David Broder, and political commentator Fred Barnes.

(Turner Affidavit, § 9).

Ms. Turner acknowledges that Mr. Huckabee was asked questions during his time in Washington about the U.S. seat in Arkansas, but asserts that, beyond "informal questions" in this regard, "no discussions or meetings occurred for the purpose of determining whether Lt. Governor Huckabee should become a candidate." (Turner Affidavit, § 11).

5. Analysis

a. Letter and Survey

According to the Senate Committee response and Brenda Turner's affidavit, the May, 1995 letter and survey were intended to raise money for State Committee debt retirement and to obtain constituent opinion on "state issues." Ms. Turner states in her affidavit that this mailing was the principal fundraising tool used by the State Committee for debt retirement. The Senate Committee response argues that the letter described briefly the previous state legislative session and asked for contributions to pay off the State Committee's 1994 debt.

Both Ms. Turner and the Senate Committee acknowledge that the opinion survey enclosed with the letter included what they term "a throw-away question" as to whether Mr. Huckabee should enter the race for the open U.S. Senate seat in 1996. Both argue that this question was part of an assessment of views on "legitimate state issues." These state issues included, among others, welfare reform, the death penalty, and highway taxes.

It is apparent that one of the questions in the State Committee's survey expressly addressed the issue of whether Mike Huckabee should become a candidate for the Senate. Whether or not this particular question also involved a "state issue," it related directly to a federal election and in itself clearly constituted testing-the-waters activity. The remaining nine questions were apparently issue-related; however, several, if not all, had federal as well as state implications and would have been potentially useful for a federal campaign.

As is noted above, the Arkansas Ethics Commission has determined that the amount of funds raised by the State Committee in 1995 went considerably beyond that which that committee should reasonably have raised to pay off state campaign-related debts. The Ethics

Commission also found that a portion of these funds was used in 1995 for "general political activity," not for state campaign-related debt reduction. Ms. Turner, campaign director of Mr. Huckabee's state campaign, has asserted that the 1995 letter was "the main fundraising vehicle" for retiring the state campaign's debt; hence, contributor response to that letter was apparently the source of the funds cited by the Ethics Commission as not "reasonable" in amount and used for purposes other than payment of debt.

Given the federal election-related contents of the survey enclosed with the May, 1995 fundraising letter and the non-debt retirement uses to which a major portion of the funds received were put, the costs of the mailing apparently constituted testing-the-waters expenditures on behalf of Mr. Huckabee's campaign for the U.S. Senate. The State Committee paid all of the costs of the letter and survey. There is no evidence in hand that any of the State Committee's outlay has been reimbursed by the Senate Committee.

As stated above, 11 C.F.R. § 110.3(d) prohibits transfers of funds, including excess funds, from a candidate's previous state campaign committee to his or her newer federal committee. In the present matter, Mr. Huckabee had not yet formed a federal committee when the letter and survey needed to be financed, and the State Committee chose to make the related expenditures itself. The State Committee could not, however, use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential Huckabee federal campaign.

Once Mr. Huckabee went beyond exploring a potential candidacy and became a candidate for federal office in October, 1995, the State Committee's testing-the-waters expenditures on behalf of his possible federal campaign became in-kind contributions to the Senate Committee

and expenditures under the Act. Because Arkansas state law permits contributions by corporations, banks and labor organizations to candidates for state office, the funds used by the State Committee for its in-kind contributions to the Senate Committee would likely have contained impermissible monies.

The response received from the Senate Committee does not state the amount spent on the May, 1995 letter and survey, nor does it give the number of letters and surveys mailed. It is possible, however, to approximate these costs by using the reports filed by the State Committee with the AEC for May, June, and July 1995. These reports, itemized by payee, amount, and purpose, aggregate disbursements made by the State Committee during these months.

Given the purposes reported for these State Committee disbursements, the following payments may have been made in connection with the May letter and survey:

<u>Month</u>	<u>Payee</u>	<u>Purpose</u>	<u>Amount</u>
May, 1995	U.S. Postal Service	Postage	\$ 137.95
May, 1995	Griffith Enterprises	Mail Expenses	1,500.00
June, 1995	Griffith Enterprises	Mail Expenses	4,681.58
June, 1995	U.S. Post Office	Mail Expenses	448.00
June, 1995	Sutton Press	Printing	318.51
July, 1995	Griffith Enterprises	Mail Expenses	2,893.93
July, 1995	Griffith Enterprises	Printing Expenses	2,546.00
July, 1995	U.S. Postal Service	Mail Expenses	320.00
July, 1995	Sutton Press	Printing	<u>255.38</u>
Total			\$13,101.35 ²

² These figures do not include the salaries paid to Brenda Turner (a total of \$16,572) and another assistant, Sharon Hicks, (a total of \$2,333) as reported by the State Committee for May, June and July, 1995. According to the AEC review of the State Committee's reports and records, the \$10,545 paid Ms. Turner in May was "for work performed between January 1 and May 7, 1995" and was paid "after the first debt retirement fund raising effort," thus presumably covering any work she performed with regard to the May fund raising letter and survey at issue in this matter.

There is evidence that the State Committee made expenditures of as much as \$13,000 for a fundraising letter and survey for purposes of testing the waters for Mike Huckabee, an eventual candidate for nomination to the U.S. Senate. Therefore, there is reason to believe that, by accepting these in-kind contributions, the Huckabee Election Committee (U.S. Senate) and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b.

b. Washington, DC Trip

According to information alleged in a news account attached to the complaint, Mr. Huckabee used \$2,000 in 1994 campaign funds to pay for an August, 1995 trip to Washington, DC by himself and his assistant, Brenda Turner. The complaint asserts that this trip, which in part involved meetings with Republican Congressional leaders and other party leaders, was made for purposes of testing the waters for a 1995-96 Huckabee federal campaign.

According to assertions in the response from the Senate Committee and in the affidavit signed by Brenda Turner, the only purpose for this trip was to meet with a consultant to the 1994 Huckabee state campaign regarding a debt owed to him by the State Committee. The Senate Committee and Ms. Turner argue that the meetings with Republican leaders and others cited in the complaint were "courtesy visits" during which no discussion of a possible Senate race was held. Ms. Turner acknowledges that the meetings included ones with Republican leaders in the U.S. Senate and House of Representatives, including representatives of the National Republican Senatorial Committee.

The Commission's regulations at 11 C.F.R. § 106.3(b)(3) state that if "a candidate conducts any campaign-related activity in a stop, that stop is a campaign-related stop, and travel-related expenditures made are reportable." The only exceptions are "incidental contacts." In the

present matter, Mr. Huckabee and Ms. Turner met with a series of Republican Party leaders during their three-day stay in Washington, DC. Given the number of meetings involved and the leadership positions represented, these meetings do not appear to have been "incidental." In addition, both the Senate Committee response and Ms. Turner acknowledge that the subject of Mr. Huckabee's possible Senate candidacy arose at these meetings. As noted above, Mr. Huckabee was quoted in the Arkansas Democrat-Gazette on August 6 as having referred to the positive "reaction" which he had received with regard to a potential Senate candidacy, indicating that the subject of a potential candidacy may have been initiated by himself.

On the basis of the information presently available with regard to the Washington, DC trip, it appears that this visit became a campaign related, "testing-the-waters" stop, whether or not it was initially planned as such. Therefore, any expenditures for the trip became in-kind contributions to the Senate Committee.

Again, the Senate Committee's response does not set out the costs of this trip. The State Committee's July, 1995 amended report itemizes a \$3,394.50 payment to "Mastercard," a \$361.46 payment to Brenda Turner, and a \$350 payment to "CNB," all for "travel expenses." The State Committee's August, 1995 report contains no travel expenses. Thus, it appears that the costs of the Washington, DC trip are reflected in the July report, although only as part of overall travel expenditure totals. Based upon the February, 1996 Arkansas Times article, the Washington-related portion of these travel costs may have been as high as \$2,000.

The funds used by the State Committee to make any and all expenditures related to the Washington, DC trip would likely have contained monies prohibited under the Act. Thus, there is reason to believe that the Huckabee Election Senate Committee (U.S. Senate) and Prissy

Hickerson, as treasurer, violated 2 U.S.C. § 441b by accepting in-kind contributions from the State Committee in connection with the Washington, DC trip. Given his direct involvement in this trip, there is also reason to believe that the Honorable Mike Huckabee violated 2 U.S.C. § 441b.

C. Best Efforts - MUR 4323

2 U.S.C. § 434(b)(3)(A) requires that political committees include in their reports the identification of all persons who have made contributions to the reporting committee in excess of \$200. 2 U.S.C. § 431(13) defines "identification" of individuals as meaning "the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer" 11 C.F.R. § 104.7(b)(1) provides that, in order for a committee to show that it has exerted its "best efforts" to obtain and report the information required by the statute, "[a] written solicitations for contributions [must] include a clear request for the contributor's full name, mailing address, occupation and name of employer." and a statement of the requirements of federal law in this regard. Pursuant to 11 C.F.R. § 104.7(b)(2), if a contributor does not provide this information with his or her contribution, the recipient committee must make "at least one effort after the receipt of the contribution to obtain the missing information." Unless a committee can show that it has exerted its best efforts to obtain and report the required information, it cannot be deemed to be in compliance with 2 U.S.C. § 434(b)(3)(A).

The complaint in MUR 4323 alleges that the Senate Committee failed to identify the occupations of 44 itemized contributors on its 1995 Year End Report, and that there is "no evidence that Huckabee or his campaign has complied with the Commission's 'best efforts' requirements." In a review of the same report as originally filed, this Office has counted

42 instances of missing information regarding occupation and place of business out of a total of 259 itemized contributions, for a 16.2% failure rate. On April 22, 1996, and thus after the filing of the complaint, the Senate Committee filed an amendment to the Year End Report providing the occupations and places of business for an additional seven contributors. This amendment reduced the number of contributors for which information was missing to thirty-five and the committee's percentage of missing information to 13.5%. On May 10, 1996 the committee filed another amendment to the Year End Report providing the occupations and place of business of five additional contributors, thereby reducing the number of itemized contributors for which information is missing to thirty and the percentage of missing information to 11.5%.

The Senate Committee has provided no information as to the contents of its original solicitations or regarding any follow-up communications with its contributors. Thus, there is no information in hand demonstrating that the Senate Committee has exerted "best efforts" to obtain the missing information.

There is reason to believe that the Huckabee Election Committee (U.S. Senate) and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to identify fully all contributors itemized in its 1995 Year End Report.